IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 958 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DHUN N MEDORA

Versus

KANTILAL D PERRY

Appearance:

MR KF DALAL for the applicant.

MR AB MUNSHI for Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 01/03/2004

ORAL JUDGEMENT

The applicant of this Civil Revision Application is the original plaintiff in H.R.P. Suit No.1062 of 1986. The applicant has filed the suit for possession against the present respondents, who are the original defendants of the said suit. During the pendency of the

said suit, an application Exhibit 40 was presented on behalf of the present applicant under Order 6 Rule 17 of the Code of Civil Procedure for amending the plaint. By such amendment, perhaps, the plaintiff wanted to add other grounds for getting decree for possession.

The learned trial Judge, by the impugned order dated 11th March, 1997, rejected the said application.

Mr.Munshi, who is appearing for the opponents, however, submitted that, in view of the amendment in Section 115 of the Code of Civil Procedure, revision against such an interlocutory order is not maintainable. In my view, in view of the amendment in Section 115 of the Code of Civil Procedure, revision against the impugned order, by which amendment of the plaint, is rejected, cannot be revised by this Court in its limited jurisdiction under Section 115 of the Code of Civil Procedure. Since revision is not maintainable, this revision cannot be entertained and hence, it is required to be rejected only on the aforesaid ground.

It is clarified that, if the applicant wants to challenge the impugned order by way of a petition under Article 227 of the Constitution of India, it would be open for the applicant to take any recourse available to her in law, for challenging the impugned order. It is clarified that this Court has not adjudicated this Civil Revision Application on merits and it is dismissed on the ground that it is not maintainable.

The Civil Revision Application is accordingly rejected. Rule is discharged. Interim relief stands vacated. No costs.

1st March, 2004 (P.B. Majmudar, J.)

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(apj)